

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KRISTEN LYNN PENISKA,

Plaintiff,

vs.

CJ FOODS INC.,

Defendant.

8:19CV277

ORDER

Plaintiff Kristen Lynn Peniska has filed a motion for court-appointed counsel. (Filing No. 11). She has also filed a motion requesting the court subpoena NEOC and EEOC records, reports, statements, and documents supporting her claims in this court. (Filing 12).

A civil litigant has no constitutional or statutory right to a court-appointed attorney. The court may, however, make such an appointment at its discretion. Davis v. Scott, 94 F.3d 444, 447 (8th Cir. 1996). A trial court has broad discretion to decide whether both the pro se party and the court will benefit from the appointment of counsel, taking into account the factual and legal complexity of the case, the presence or absence of conflicting testimony, and the pro se party's ability to investigate the facts and present or defend the claims. Id. The court may also consider whether and to what extent the unrepresented party made any effort to retain counsel before seeking court-appointed counsel.

Considering all these factors, the court finds appointment of counsel is not warranted under the facts presented. The claims and defenses at issue are not factually or legally complex, there is no sufficient showing of efforts made to locate

counsel without court assistance, and Plaintiff is able to adequately litigate the claims and defenses. [Id.](#) See also, [28 U.S.C § 1915\(a\)](#).

Accordingly,

IT IS ORDERED:

- 1) Plaintiff's motion for appointed counsel, (Filing No. 11), is denied.
- 2) On or before November 8, 2019, Plaintiff Kristen Lynn Peniska shall either: (a) obtain the services of counsel and have that attorney file an appearance in this case; or (b) file a statement notifying the court of her intent to litigate this case without the assistance of counsel. The failure to do so may result in a dismissal of Plaintiff's claims without further notice.
- 3) Plaintiff's motion for the court to subpoena NEOC and EEOC records (Filing No. 12) is denied without prejudice to a renewed motion being filed after defendants have been served and mandatory disclosures have been made.

Dated this 8th day of October, 2019.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge